

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,) 8:02CR374
)
v.)
)
ROBERT E. LILLARD,) ORDER
)
Defendant.)
)

This matter is before the court on defendant Robert E. Lillard's petition for writ of mandamus pursuant to 28 U.S.C. § 1651(A) with the Eighth Circuit Court of Appeals, Case No. 02cr374. The Eighth Circuit has asked this court to respond to the petition for mandamus. (Letter from Michael E. Gans, Clerk of Court, dated October 1, 2008, Filing No. 102.) In his writ of mandamus, the defendant asks the Eighth Circuit to compel this court to obey and follow statutory and constitutional law. In particular, he argues that his indictment is defective and cannot include prior offenses. In that regard he contends he should not be considered an armed career criminal. He asks that his indictment be dismissed with prejudice.

This court has carefully reviewed defendant's request for mandamus relief. It is this court's belief that defendant's current request to the Eighth Circuit is without merit and has no basis in law. The Eighth Circuit has already ruled on defendant's appeal, Filing No. 89, and has determined that defendant was in fact eligible for a sentencing enhancement pursuant to the Armed Career Criminal Act, 18 U.S.C. § 924(e) and further determined that the convictions in question were properly viewed as separate criminal convictions under § 924(e).

The court directs the Clerk of Court for the District of Nebraska to send a copy of this response to the parties in this case, and in particular to Robert E. Lillard, and to the office of Michael E. Gans, Clerk of Court, Eighth Circuit Court of Appeals.

DATED this 1st day of October, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge